*United States Government*
*National Labor Relations Board*
**OFFICE OF THE GENERAL COUNSEL**

# Advice Memorandum

DATE: February 20, 1996

TO : Frederick Calatrello, Regional Director
Region 8

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: Textile Processors, Local 1
(A.A. London Cleaners, Inc.) 530-5784-6733
Case 8-CA-27907 530-5784-6767

This Section 8(a)(5) case was submitted for advice on whether the Employer's admittedly untimely withdrawal from multiemployer unit bargaining was privileged because that unit allegedly had become fragmented.

In 1985, the Employer joined the Guild, a multiemployer association of around nine employers. The most recent Guild-Union bargaining agreement expired on March 31, 1995 and bargaining commenced for a successor agreement.

On May 8, the Union struck and picketed one Guild member, Kingsbury Cleaners. The eight other Guild members agreed to support Kingsbury by contributing $500 each for every week of the Union's strike. Nevertheless, on May 19, Kingsbury signed an interim bargaining agreement with the Union expressly binding Kingsbury only until such time as the Guild itself reached a new bargaining agreement. Shortly thereafter, the Guild notified the Union that Kingsbury was no longer considered a Guild member.

On June 19, the Union began a strike and picketing against the Employer. The remaining Guild members agreed to support the Employer by contributing $100 each for every week of the Union's strike. The Employer complains that it did not receive contributions from all Guild members and also that contributions ceased after only two weeks. In mid-June 1995, all negotiations between the Guild and the Union ceased.

In October 1995, the Employer sought and obtained from the Guild permission to drop out of the Guild and bargain individually with the Union. On November 30, the Employer

advised the Union that the Employer had withdrawn from the Guild and was requesting bargaining on an individual basis. The Union replied that it did not wish to bargain individually with the Employer and would check with legal counsel on the legality of the Employer's withdrawal. The Union did, however, provide the Employer with two proposed bargaining agreements.[1] A few days later, the Union changed its picket signs to protest the Employer's withdrawal from Guild bargaining. The instant charge attacks that withdrawal as untimely and unlawful.

We conclude, in agreement with the Region, that the Employer's withdrawal was not privileged because the Guild multiemployer unit had not become fragmented.

Fragmentation of the multiemployer unit may justify untimely withdrawal where the group becomes incapable of acting as a viable bargaining entity.[2] Fragmentation of the multiemployer unit which occurs without the fault of the respondent employers after negotiations have begun may justify withdrawal if a substantial proportion of the unit has properly withdrawn.[3] The facts of each case must be assessed in order to ascertain the impact of the parties' conduct on the continued viability of multiemployer bargaining.[4] Determination of whether there are "unusual

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[1] The first was an interim agreement virtually identical to the interim agreement previously executed by Kingsbury. The second was substantially the same as the Kingsbury interim agreement except that it appeared to be a final, individual agreement with the Union.

[2] Joseph J. Callier, 243 NLRB 1114 (1979); Corson & Gruman Co., 284 NLRB 1316, 1327, n. 34 (1987).

[3] See, e.g., NLRB v. Hartman, 774 F.2d 1376, 1386 (9th Cir. 1985), enfg. in pertinent part 268 NLRB 1147; NLRB v. Southwestern Colorado Contractors Assoc., 447 F.2d 968 (10th Cir. 1971).

[4] Tobey Fine Papers, 245 NLRB 1393, 1395 (1973), enfd. on other grounds 659 F.2d 841 (8th Cir. 1981).

circumstances" of fragmentation turns on the "continued viability of the multiemployer contract negotiations".[5]

Fragmentation may be the product of agreements between the Union and individual employer-members of the multiemployer association. In Bonanno,[6] the Supreme Court distinguished between "interim agreements" which contemplate adherence to a final unitwide contract and are thus not antithetical to group bargaining, and "separate agreements" which are clearly inconsistent with, and destructive of, group bargaining. In the Court's view, interim agreements may facilitate the breaking of impasse and the resumption of unitwide collective bargaining by preserving a continuing mutual interest by all employer-members in a final association wide contract. Such agreements, therefore, may actually prevent significant unit fragmentation. The execution of separate agreements by the union and individual member-employers, however, may constitute an "unusual circumstance" where the agreements effectively fragment and destroy the integrity of the multiemployer association. Bonanno, 454 U.S. at 414-416.

In Birkenwald, Inc., 243 NLRB 1151 (1979), the Board found that an individual agreement did not sufficiently fragmented the multiemployer association unit as to constitute an "unusual circumstance" justifying withdrawal. There, the association had reached an impasse in negotiations with the union, after which the largest member of the association, employing around 30 percent of the entire unit, had entered into an individual agreement with the union.[7] However, the signing of that separate agreement then precipitated sufficient flexibility on the part of the remaining members of the association so that the impasse was broken. Shortly thereafter, the respondent withdrew from the multiemployer bargaining group, terminated the association's authority to represent it, and informed the

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[5] Universal Enterprises, Inc., 291 NLRB 670 (1988).

[6] Charles D. Bonanno Linen Service, Inc. v. NLRB, 454 U.S. 405, 415 (1982).

[7]There is no indication that the legality of that agreement had itself been challenged.

union that it was willing to enter into separate negotiations. Noting that a substantial majority (70 percent) of the employees in the original unit had remained even after the largest employer's agreement with the union, the Board found that the execution of that agreement did not constitute an "unusual circumstance."

In contrast, in Corson & Gruman Co., 284 NLRB 1316, 1327 (1987), enfd. 133 LRRM 3022 (D.C.Cir. 1990), the Board held that the execution of separate, final agreement with one of five employers in unit left the multiemployer association "incapable of functioning as a unit and of effectively representing" the remaining employers where the four remaining employers were split in two equal and diametrically opposed camps.

In the instant case, we agree that the execution of an interim agreement by Kingsbury, and the conditional provision of an interim and a final agreement to the Employer, in no way resulted in the fragmentation of the Guild unit. As noted by the Supreme Court in Bonanno, interim agreements may facilitate the breaking of an impasse and are not antithetical to group bargaining. Moreover, there is no evidence that the Union assented to the untimely withdrawal of either Kingsbury. However, even if Kingsbury had lawfully withdrawn from the Guild unit, that circumstance still would not have resulted in the fragmentation of this uni t under the rationale of Birkenwald, supra.

Accordingly, we agree that further proceedings are warranted against the Employer’s unlawful, untimely withdrawal from multiemployer bargaining.

B.J.K.